

15.04.00.00 – AIRSPACE LEASES

15.04.01.00 Types of Airspace Leases

The typical airspace lease agreements are:

- **Rental Agreement** - non-complex, non-developmental use for six months with one six-month extension.
- **Parking and Open Storage Agreement** - short term, non-developmental use for up to 5 years with no options or extension. Usually the result of an open bid process.
- **Non-Developmental Agreement** – longer term non-developmental use for more than 5 years (including options), which may involve minor improvements to the site. Usually the result of direct negotiations.
- **Developmental Agreement** - long term developmental use for more than 5 years (including options) involving major construction. Usually the result of direct negotiations.
- **Marler Johnson Park Agreement** - Local public agency's use of a site for a park or recreational facilities.
- **Park and Ride Agreement** - month-to-month agreement with a non-profit organization to use the park and ride facility in exchange for maintenance and security services.
- **Three-Year Directly Negotiated Non-Developmental Agreement** - three-year lease with no right of extension, resulting from direct negotiations for sites that are not good candidates for bidding, or have been offered for competitive bid but no bids were received.
- **Telecommunications Wireless License (Site License Agreement)** - specific site agreement for a wireless facility for 10 years with three 5-year options. Carrier must have executed a HQ A/S Master License Agreement, which defines the specific terms and conditions for all sites.

Other lease agreements may be entered into with public agencies (e.g., local public agencies, school districts, and government agencies) and the motion picture industry.

15.04.01.01 Rental Agreement

Rental agreements are for interim uses (e.g., Christmas tree sales, radio frequency testing, and construction staging areas). The term is limited to six months with one six-month extension and cannot go beyond one year. At no time will the use be extended beyond 18 months.

Although a rental agreement can be used when a site is pending approval of the terms and conditions of a directly negotiated lease, the preferred method is to use a Letter of Understanding or Option Agreement. A rental agreement does not imply any approval to lease the site for development purposes.

15.04.01.02 Parking and Open Storage Agreement

Short-term parking and open storage lease agreements are used when the proposed lessee will make limited or no improvements to the site, so does not need an extended period of time to amortize the cost of improvements. The term is normally two years but can be for five years, depending on the need of the lessee and the potential rate of return that may result from a longer term agreement.

The standard agreement can also be used for other non-developmental uses that will not exceed five years as long as all other provisions in the agreement remain the same. HQ A/S should be contacted prior to modifying any lease provisions for this different use.

The agreement is usually used after a competitive bid process but in rare circumstances can be used after direct negotiations (e.g., with an adjoining owner of a landlocked site).

See Section 15.06.00.00 for processing these leases.

15.04.01.03 **Non-Developmental Agreement**

This agreement is very similar to the Parking and Open Storage Agreement, except the lease term is beyond five years but usually no more than 15 years, including all options and extensions. The longer lease time is needed to generate a higher rate of return, or the lessee needs the site as plottage for an adjoining development or to amortize the minor improvements needed at the site (e.g., paving, striping, lighting, and curbing). Also, local school districts or governmental agencies may require longer terms.

This agreement is usually the result of direct negotiations but, on rare occasions, can be the result of a competitive bid.

If Airspace determines direct negotiations will result in a higher return to the Department, the request must be submitted to the AAC and CTC (See Section 15.06.05.00). HQ A/S must concur with Airspace's recommendation prior to submitting the request to the AAC.

15.04.01.04 **Developmental Agreement**

The Department is not actively pursuing developments on airspace sites, particularly those proposals underneath a highway structure. Should Airspace be approached with a developmental use (e.g., office building, mini-warehouse, or parking structure), however, DARC must thoroughly review the proposal before requesting approval to negotiate directly with the proposed lessee. Since competitive bids are rarely used for developmental leases, there is no standard format. If Airspace determines that this is the best approach to generate the highest rate of return, it should consult HQ A/S when preparing the bid package and developing the selection process for the Offer and Proposals.

The complex nature of a development lease usually requires writing a specific lease agreement, possibly using the standard agreement as the basic format. HQ A/S and Legal should be involved in developing the agreement prior to approving and executing the document.

If Airspace determines direct negotiations will result in a higher return to the Department, it must submit a request to the AAC and CTC (See Section 15.06.05.00).

HQ A/S must concur with Airspace's recommendation prior to submitting the request to the AAC.

15.04.01.05 **Marler Johnson Agreement**

Pursuant to the Marler Johnson Highway Park Act of 1969 and the terms and conditions established by the CTC, a local agency can request use of an airspace site for park or recreational purposes. The normal DARC process is followed and a FMLR is established. Rental offsets for anticipated savings to the Department can be deducted from the FMLR to determine the actual rate.

Example 1:

FMLR	\$825/mo
Security costs from previous SFY	-212/mo
Maintenance costs (debris, weeds, fire abatement) from previous SFY	<u>-372/mo</u>
Actual rate	\$241/mo

Airspace should ensure local agency proposals do not propose a children's play area **directly** underneath the edge of the highway structure as this could create an unsafe condition should debris be tossed over the side by a passing vehicle.

15.04.01.06 **Park and Ride Agreement**

An FHWA approved demonstration program allows month-to-month tenancies on park and ride lots to enhance lot occupancy by providing security and maintenance.

Traffic Operations, Park and Ride Office, may request assistance from Airspace in locating a non-profit organization to occupy a park and ride lot that is not being used to its full capacity. Leasing a portion of the lot provides on-site management of the facility to assist with maintenance and security, which should improve facility usage. In some cases, longer-term leases with other entities may be considered. Consult with HQ A/S on specific proposals.

The FMLR for the area to be leased is offset against the savings to the Department from not having to provide security and maintenance. The non-profit organization's use cannot reduce the number of parking spaces available. The minimum lease rate is \$1 per month, calculated by subtracting the savings to the Department from an approved FMLR or \$500 (minimum lease rate), whichever is greater.

Example 2:

FMLR	\$400/mo.	
Minimum Lease Rate	\$500/mo.	
Maintenance Offset	\$600/mo.	
	\$499/mo.	(maximum offset)
Lease Rate	\$ 1/mo.	(minimum lease rate)

Airspace should review leases annually to ensure usage at the site has improved with on-site management, and that continuing the month-to-month arrangement is in the Department's best interest. All lease agreements can be terminated with 30-day notice if the Department needs the entire area, if on-site management has not improved usage, or if the lessee is not providing the required level of security and maintenance.

15.04.01.07 **Three-Year Directly Negotiated Non-Development Agreement**

Airspace is authorized to negotiate directly with a proposed lessee on a site that has been unsuccessfully bid or cannot be bid because it is landlocked. The term cannot exceed 3 years, even with extensions, and the use cannot require any major site improvements. The following guidelines apply.

- The use is non-developmental, with limited improvements (e.g., paving, striping).
- Lease rate is based on an estimate of FMLR.
- FMLR is adjusted 5% each year.
- There is only one potential lessee.
- DARC and FHWA must approve the use.
- The use complies with local zoning and is considered non-controversial.
- No hazardous materials can be produced, stored, or transported.

This process was developed to streamline Airspace attempts to get a site occupied when it is in the Department's best interest but the intended use, rate, and term do not justify the time needed to get AAC and CTC approval.

The AAC is advised annually on the status of these leases and can terminate this practice if the agreements are not being used successfully.

15.04.01.08 **Telecommunications Licenses**

A Master License Agreement (MLA) for Cellular and Personal Communications Services (PCS) Carriers allows a licensed carrier to install and operate a wireless facility. Each carrier must execute the MLA with HQ A/S prior to executing a specific Site License Agreement (SLA) with Airspace.

The MLA allows the carrier to install a facility on any Caltrans owned property (maintenance facility, park and ride lot, office building, and within operating and non-operating right of way) where it is deemed safe and non-interfering.

The current MLA does not apply, however, to proposals to install wireless facilities on conventional highways. The Permits Office must handle those requests.

Refer to the Telecommunications Licensing Process and Guidelines (August 1997) for further details.

15.04.01.09 **Public Agency Leases**

A school district, local public agency, or other governmental agency can lease an airspace site for public use. Airspace should coordinate renewals and payment schedules with the agency's budget cycles to ensure lease payments are allocated in its budget. Airspace should contact the agency at least six months prior to the budget cycle date to determine if the lease will be renewed. If so, an appraisal should be requested with a due date prior to the date of the lessee's budget request. After the appraisal is approved, Airspace should begin discussions immediately with the lessee to ensure adequate time for the lessee to request additional funds if the lease rate increases.

15.04.01.10 **Film Industry Leases**

In accordance with GC 14998.7, the Department shall waive compensation and cooperate fully with the film industry for use of vacant airspace sites or for subletting leased sites.

15.04.02.00 **Oil and Gas Leases**

To generate revenue, oil and gas rights may be leased to any oil and gas company that will pay rates equal

to or greater than the rate being paid to individuals in the same geographical area.

To lease a site, the company will provide Airspace with its proposed lease agreement, the anticipated revenue, a vicinity and site map, and a written legal description. After Airspace review of the agreement (with assistance from HQ A/S and Legal as appropriate), the company must execute the agreement before the Department executes it. Generally, the lease agreement or the memorandum of the lease is recorded. Airspace should ensure that the Department's signature is authorized to execute recordable documents in the county where the site is located. The company must pay a fixed lease rate based on market data until the drilling operation begins.

When the company starts actual production, royalties become due (percentage of gross revenues). Airspace must change the account to reflect zero rent and schedule the lease for an annual payment (in arrears).

When the lease is terminated, a quitclaim must be recorded, with a copy to R/W Engineering to update their records.

15.04.03.00 **Utility Companies**

Airspace leases and procedures are not used to establish or to continue the placement of public utility lines in freeway rights of way. The Caltrans Encroachment Advisory Group (EAG) in Headquarters issues permits for the use and occupancy of such rights of way for a public utility purpose. In other words, under no circumstances will the Department grant an airspace lease in the right of way to a utility company. Exceptions are granted if a utility company proposes to lease an airspace site for parking or office space. The utility company must be referred to the Office of Permits, which will handle all requests for an encroachment permit, including requests for exceptions to the longitudinal encroachment policy.

Telecommunications Wireless Carriers are not treated as utility companies, even if some are regulated by the California Public Utilities Commission (PUC) as they do not provide a necessary service to the public, and they operate in a competitive arena. Sites for wireless facilities are handled exclusively as "site licenses" by Airspace and not by District Permits Office.

15.04.04.00 **Lease Agreements**

Standard lease agreements for all types of airspace leases are available in each district/region. Updates and changes to the provisions are submitted via a memorandum and/or electronic methods (E-mail, network, disks). Airspace should contact HQ A/S prior to entering into a new agreement to ensure it is the latest version.

HQ A/S must approve all modifications to the standard lease provisions, and the R/W Program Manager or a delegated representative must execute the agreement. One original executed copy of all long term leases must be sent to HQ A/S.

See Reference File for the most current standard lease agreements and delegations for execution.

15.04.04.01 **Terms and Conditions**

The standard terms and conditions of a lease agreement generally include:

- Use and improvements.
- Term of the agreement, including options and extensions.
- Lease rate per approved valuation report, if based on the FMV, and also the rate of return.
- If a bid, the lease rate must be based on the last bid or the previous lease rate.
- Reevaluation provisions and periodic adjustments to the lease rate.
- Default, liability, and termination provisions.
- Sublease, assignment, and transfer provisions.
- Retention and removal of improvements.
- Maintenance responsibilities of all parties.

The standard lease agreement provides for all the above and more, and HQ A/S must pre-approve any modifications to the clauses.

Requests for "CTC Approval of Terms and Conditions" of a lease agreement must provide detailed information about the above terms and conditions.

Sample format:

Use:	Improved parking
Term:	10 years, one 5-year extension
Lease Rate:	\$835 (rounded) per month
Fair Market Value:	\$100,000 as plottage
Rate of Return:	10%
Adjustments:	3.5% annually
Reevaluations:	After 10 years
Improvements:	Paving, striping, curbing
Termination:	Standard - either party after the first 5 years
Liability Coverage:	Standard \$5,000,000

15.04.04.02 Insurance Requirements

Each airspace site must be insured for \$5,000,000 in liability and, if the site is developed, 100% of replacement cost. The lessee must provide a current certificate of insurance each year. Airspace should review it to insure the fire coverage is sufficient considering increases in value. Each telecommunications wireless facility must be insured for \$5,000,000 liability. HQ A/S will monitor the insurance requirements for the Telecommunications licenses. Some existing leases only required \$2,000,000 or less at the time of execution, and these should be increased to the new minimum as the leases are amended or extended. Use Form RW 15-03.

15.04.05.00 Option to Lease

An option allows the proposed lessee to hold the site while obtaining all reviews and approvals necessary to construct (e.g., local permits and construction funding). The use of an option for long-term competitive bids does not require prior HQ A/S approval, but Airspace should consult with HQ A/S about the applicability of an option.

15.04.05.01 Option Agreements

HQ A/S will assist Airspace in preparing the Option Agreement. If the lease is through direct negotiations, the AAC must pre-approve all requests for "CTC Approval of Terms and Conditions." The standard option period is three to six months.

15.04.05.02 Option Payments

The Option Agreement will specify the amount of option payment that the proposed lessee (Optionee) must pay to hold the site pending all approvals and executing the lease agreement. The option payment should be based on the minimum bid and the potential rate if leased as is. The standard minimum option payment is one month's rent based on the successful bid.

15.04.05.03 Exercising Option Rights

The optionee/lessee must notify Airspace, in accordance with the notice provisions in the option agreement, whether or not optionee/lessee intends to exercise the option to execute the lease agreement. Extensions can be granted in rare circumstances, and provisions for such extensions should be addressed in the initial Option Agreement.

15.04.06.00 Exercising Option to Extend an Existing Lease

Not to be confused with the Option Agreement, some lease agreements provide for an option to extend the original term (e.g., 10-year lease with three 5-year options). The lessee must state in writing its intent to exercise the option and identify any anticipated changes to the use or the agreement. Airspace must review terms of the agreement to ensure conditions to extend have been met and determine if the lessor (Caltrans) has the right to deny the option. If so, Airspace must immediately conduct a DARC review of the site before formally acknowledging the request. Also, the lease agreement may provide for reevaluation prior to the extension, requiring Airspace to coordinate the reevaluation with the Appraisal Branch and the lessee. Airspace sends an acknowledgment letter to the lessee and sends copies of the letter and notice to HQ A/S.

If there is no change in the provisions of the lease, an amendment to exercise an option is not needed. If there is a change, it is handled in the same manner as amendments (see Section 15.06.12.05).